

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RACHEL PORTER,

Plaintiff,

vs.

AMERICAN FAMILY INSURANCE, et al.,

Defendants.

Case No. 2:07-cv-00906-RLH-GWF

**FINDINGS AND
RECOMMENDATIONS**

This matter is before the Court on this Court's Order to Show Cause (#54) filed December 16, 2008. Plaintiff was ordered to Show Cause, in writing, no later than December 29, 2008 why Plaintiff's action against Defendant National Outsource, Inc. should not be dismissed based on Plaintiff's withdrawal of her Amended Complaint (#20). To date, no response has been filed.

BACKGROUND

On August 2, 2007, Plaintiff filed her original Complaint (#3) against Defendants National Outsource, Inc. and American Family Insurance. In response, Defendant National Outsource, Inc. filed its Motion for a More Definite Statement (#11), which the Court granted on October 31, 2007. *See Order (#16)*. On December 3, 2007, Plaintiff filed her Amended Complaint (#20) against Defendants, and Defendants National Outsource, Inc. and American Family Insurance thereafter filed their answers on January 31, 2008 and March 10, 2008, respectively. *See Civil Docket (#35), (#39)*. On July 2, 2008, Plaintiff's Amended Complaint (#20) was withdrawn. *See Order (#47)*. On July 15, 2008, the Court entered Order (#49), which dismissed Defendant American Family Insurance, with prejudice, as a party to this suit. Thus, only Defendant National Outsource, Inc. remains as Defendant in this case. However, because the Amended Complaint (#20) was withdrawn, and Defendant National Outsource,

1 Inc. was not required to file an answer to the original Complaint (#3), there is arguably no current
2 action pending before the Court. Accordingly,


3 **RECOMMENDATION**

4 **IT IS HEREBY RECOMMENDED** that Plaintiff's action against Defendant National
5 Outsource, Inc. be dismissed based on Plaintiff's withdrawal of her Amended Complaint (#20).

6 **NOTICE**

7 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
8 writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the
9 courts of appeal may determine that an appeal has been waived due to the failure to file objections
10 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)
11 failure to file objections within the specified time and (2) failure to properly address and brief the
12 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues
13 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
14 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

15 DATED this 7th day of January, 2009.

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18 **GEORGE FOLEY, JR.**
19 **UNITED STATES MAGISTRATE JUDGE**
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